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Part 2

THE HOMESTAKE LAND EXCHANGE

SEPTEMBER 24, 1990.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. DE LA GARZA, from the Committee on Agriculture, submitted the following

REPORT

[To accompany H.R. 4567 which on April 19, 1990, was referred jointly to the Committees on Agriculture and Interior and Insular Affairs]

The Committee on Agriculture, to whom was referred the bill (H.R. 4567) to authorize an exchange of lands in South Dakota and Colorado, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert the following:

SECTION 1. FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress finds and declares that—

(1) certain lands located within or adjacent to the Black Hills National Forest in Lawrence and Meade Counties, South Dakota, are currently in private ownership;

(2) these land, which are owned by Homestake Mining Company of California (hereinafter referred to as "Homestake"), are intermingled with National Forest lands and comprise potential valuable additions to the Black Hills National Forest to serve important public values and objectives, including but not limited to—

(A) public access and opportunities for hunting, fishing and other outdoor recreation;

(B) fish and wildlife habitat protection (including Blue Ribbon trout habitat in Spearfish Creek);

(C) the preservation of scenic beauty;

(D) public access to, and the enhancement of the outstanding scenic, natural and recreational values of Spearfish Canyon and other canyons within the Black Hills;

(E) protection of the scenic backdrop to the Spearfish Canyon National Forest Scenic Byway; and

(F) more efficient National Forest land management;

(3) such lands, if not acquired for addition to the Black Hills National Forest, may be sold and developed for purposes which may be incompatible with the above mentioned objectives;

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(4) Homestake has offered to convey such lands, which total approximately twelve thousand two hundred and seventy-four acres, to the United States by sale or exchange so that they may be managed for National Forest and land conservation purposes;

(5) Homestake has identified national forest lands in Summit County, Colorado that—

(A) Homestake or local government units would like to acquire;

(B) are intermingled with or adjacent to privately owned and developed lands;

(C) are currently developed, permitted for ski area or local government purposes, or adjacent to developed or permitted areas or communities;

(D) are not necessary for retention in government ownership to serve the public interest or objectives; and

(E) are therefore suitable for disposal through a land exchange; and

(6) given the relative environmental and other values of the lands proposed for exchange in this Act, the land exchange set forth herein is clearly in the public interest and represents the land acquisition strategy that best meets dual public objectives of acquiring the Spearfish Canyon and other South Dakota properties, while at the same time minimizing or eliminating cash outlays by the United States to achieve such objectives.

(b) PURPOSE.—It is the purpose of this Act to authorize, direct, and expedite the consummation of the interstate land exchange and transfer set forth herein in order to further the public interest by acquiring lands in South Dakota with important values for permanent public management and protection and to transfer certain lands to non-federal ownership in Summit County, Colorado.

SEC. 2. SOUTH DAKOTA-COLORADO LAND EXCHANGE.

(a) IN GENERAL.—If Homestake enters into an exchange agreement with the Secretary of Agriculture, the Secretary shall exchange lands with Homestake as set forth in this Act.

(b) CONVEYANCE BY HOMESTAKE.—Except as otherwise provided in this subsection, Homestake shall convey to the Secretary of Agriculture all right, title and interest of Homestake in certain lands in Lawrence and Meade Counties, South Dakota, that comprise approximately twelve thousand two hundred and seventy-four acres. Such lands include approximately 1,250 acres of riparian lands in Spearfish Canyon that encompass some 20 miles of stream frontage on Spearfish Creek and are generally depicted on maps entitled "Forest Service-Homestake Land Exchange—South Dakota Lands to Forest Service", numbered A–H, and dated February, 1990. In making such conveyance Homestake shall retain:

(1) All mineral rights in the above described lands owned, held or controlled by Homestake as of the date of enactment of this Act, except that—

(A) any future exercise of such mineral rights shall be subject to the provisions of 36 CFR 251–15 in effect on the date of enactment of this Act pertaining to surface and other use of lands conveyed to the Secretary of Agriculture where mineral rights are reserved; and

(B) with respect to mineral rights retained in the approximately 1,250 acres of riparian lands within the watershed of Spearfish Canyon, any exploration and development of such rights shall be limited to methods and activities that do not disturb the surface of such lands.

If such rights are ever proposed for exploration and development, the Secretary shall provide Homestake with such access or permits on, through, or under National Forest lands including, but not limited to permits for drilling tunnels, air shafts, surface vents and other activities incidental to exploration or underground mining operations adjacent to such riparian lands as will reasonably permit exploration and development of the mineral rights without surface disturbance of such riparian lands or impairment of the values of Spearfish Canyon as set forth in this Act.

(2) All water rights within the watershed of Spearfish Creek and its tributaries owned, held, or controlled by Homestake as of the date of enactment of this Act and shall exercise such rights in accordance with applicable Federal, State, and local law and in accordance with any subsequent cooperative agreements or undertakings entered into between Homestake, the Secretary, and the State of South Dakota for the protection and enhancement of the values of Spearfish Canyon as set forth in this Act.

(3) Cabin sites as indicated on the map numbered "A" referenced in this subsection within the watershed of Spearfish Creek and its tributaries that are intermingled with the lands to be conveyed to the Secretary of Agriculture but

that are owned and permitted by Homestake to private parties and such sites will continue to remain in private ownership.

(c) CONVEYANCE BY UNITED STATES.—Upon receipt of title to the lands identified in subsection (b) the Secretary shall simultaneously convey to Homestake all right, title, and interest of the United States, except for mineral rights, subject to valid existing rights and existing National Forest improvements, in and to the following:

(1) Approximately eight hundred and sixty-eight acres of lands located in Summit County, Colorado, as generally depicted on maps entitled "Forest Service-Homestake Land Exchange—Lands to Homestake", numbered 1–3 and dated May 1990, and numbered 4–6 and dated March 1990, except that the lands identified on Map number 5 and generally known as the South Frisco Bay parcel shall not be patented to Homestake unless and until the Town of Frisco and Summit County, Colorado jointly agree to a land use plan for such parcel that emphasizes the use of such parcel for open space and recreation. If the South Frisco Bay parcel is not patented to Homestake within eighteen months after the date of enactment of this Act, the Secretary shall in lieu thereof either pay Homestake cash equalization moneys without regard to the 25% limitation contained in subsection 3(a) of this Act or offer Homestake monetary credits pursuant to that subsection, as the Secretary may find preferable.

(2) Not to exceed forty acres of lands located in Lawrence County, South Dakota, which currently comprise National Forest cabin permit sites, as generally depicted on a map entitled "Forest Service-Homestake Land Exchange-Spearfish Cabin Sites to Homestake," dated February 1990, that shall be sold to the current cabin permittees by Homestake at the value of such lands as determined by an appraisal done pursuant to section 3(b) plus any surveying, platting or other administrative costs incurred by Homestake to prepare and sell such lands, upon application by the permittees or their successors in interest. The transfer of any particular cabin site to Homestake pursuant to this subparagraph shall be contingent on the permittee's request of such a transfer. If such a request is not made, the site shall continue to be permitted by the Secretary in accordance with existing rules, regulations, and procedures.

Mineral rights in the lands identified in this subsection shall not be conveyed to Homestake and, subject to valid existing rights, shall be withdrawn from further appropriation under the mining laws and from disposition under all laws pertaining to mineral leasing and all amendments thereto.

(d) RESERVATIONS.—Patents issued by the Secretary of the Interior for the lands conveyed pursuant to section 2(c)(1) shall reserve to the public, for administration by the Secretary of Agriculture or by such State or local units or agencies of government, or by private non-profit organizations, as the Secretary of Agriculture in consultation with local planning authorities determines appropriate and qualified to fulfill the purposes of the reservation—

(1) the right of access for fishing use along all streambeds (up to the ordinary high water mark) on streams which flow through the lands conveyed;

(2) a right-of-way for the Colorado Trail along its existing routes through the lands identified on Map 3 of the lands referred to in subsection (c) or along relocated routes as may be identified by the Secretary of Agriculture in consultation with local planning authorities;

(3) a right-of-way for relocation of the existing bicycle path through the lands identified on Map 2 of the lands referred to in subsection (c) to a new route as may be identified by the Secretary of Agriculture in consultation with local planning authorities.

SEC. 3. TERMS AND CONDITIONS OF EXCHANGE.

(a) EQUALIZATION OF VALUES.—The values of the lands to be exchanged pursuant to this Act shall be equal as determined by the Secretary of Agriculture, or if they are not equal, shall be equalized by the payment of money to Homestake or to the Secretary subject to the 25 percentum cash equalization limitation of section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716). The Secretary shall try to reduce the amount of cash equalization to as small an amount as possible. In lieu of any cash equalization payments which may be due Homestake pursuant to this Act, the Secretary may elect to offer Homestake monetary credits, which shall be considered "moneys received" within the meaning of the Act of May 23, 1908 (16 U.S.C. 500); against any moneys owned the Secretary by Homestake or its agents for timber sales within the Black Hills National Forest. Any cash equalization moneys received by the United States pursuant to this Act shall be considered money received and deposited pursuant to the Act of December 4, 1967, as amended (Public Law 90–171, 16 U.S.C. 484a), commonly known as the Sisk Act. The

value of the surface development rights relinquished by Homestake on the 1,250 acres within Spearfish Canyon pursuant to section 2(b)(1)(B) shall be considered for all purposes of law a donation by Homestake to the United States and shall not be required to be appraised for purposes of value equalization or other provisions of this Act.

(b) APPRAISALS.—In order to expedite the consummation of the exchange directed by this Act, Homestake shall arrange and pay for appraisals by a qualified appraiser or appraisers mutually acceptable to Homestake and the Secretary of all lands and interests therein to be included in the exchange for which appraisals are required for purposes of this Act. Such appraisals shall be completed and submitted to the Secretary for approval within sixty days after the enactment of this Act. In the event the Secretary and Homestake are unable to agree to the appraised value of a certain tract or tracts of land to be included in the exchange within one hundred and twenty days after the date of enactment of this Act, the appraisal, appraisals, or appraisal issues in dispute shall be resolved through a process of bargaining or submitted for arbitration according to Section 3 of the Federal Land Exchange Facilitation Act of 1988 (Public Law 100-409, 43 U.S.C. 1716(d)). Appraisals of lands in Colorado identified in section 2(c) of this Act for conveyance to Homestake shall not reflect any diminution in value attributable to any conversion of existing ski area permits into ski area permits pursuant to the National Forest Ski Area Permit Act of 1986 (16 U.S.C. 497b note) (Public Law 99-522).

(c) EXCHANGE AGREEMENTS.—The Secretary shall attempt, within 60 days after the completion of appraisals under this section, to enter into an exchange agreement with Homestake to consummate exchange of the specific tracts of land identified in Section 2 of this Act. Unless otherwise specified in the exchange agreement, the tracts shall be exchanged at the earliest possible date after the exchange agreement is signed. It is the intent of Congress that the exchange be completed no later than two hundred and seventy days after the date of enactment of this Act.

(d) ADDITION TO BLACK HILLS NATIONAL FOREST.—Lands acquired by the United States within or adjacent to the exterior boundaries of the Black Hills National Forest shall be added to and administered as part of the Black Hills National Forest. The Secretary of Agriculture is hereby authorized to modify such boundaries to incorporate such lands upon their acquisition by the United States. Upon their inclusion in the National Forest System such lands shall be managed in accordance with the laws, rules and regulations generally applicable to the National Forest System, unless otherwise specifically provided by this Act.

(e) DEFINITION.—As used in this Act, the term "Homestake" shall mean the Homestake Mining Company of California or its successors or assigns.

SEC. 4. CONVEYANCE TO SUMMIT COUNTY, COLORADO.

(a) IN GENERAL.—Upon payment by Summit County to the Secretary of the sum of $25,000 and execution of an agreement between the County and the United States as specified in paragraph (4), the Secretary of Agriculture shall convey to Summit County, Colorado, all right, title and interest of the United States in approximately four hundred and seventy-seven acres of land as generally depicted on a map numbered 7 and entitled "Summit County Landfill", dated July 1990. Such conveyance shall be subject to the following conditions:

(1) The lands conveyed shall continue to be used for solid waste disposal, expansion of the Summit County landfill, or other authorized purposes of Summit County government.

(2) In the event Summit County ever sells, exchanges or otherwise disposes of all or a portion of the lands acquired pursuant to this section, all proceeds of such sale, exchange, or disposal shall accrue to the United States, or the Secretary of Agriculture may elect to reacquire, without compensation to Summit County, any or all portions of such lands that have not been used for solid waste disposal, as the Secretary determines appropriate prior to their sale, exchange, or disposal by the County.

(3) The patent issued by the Secretary of the Interior pursuant to this section shall not contain a reverter provision and under no circumstances shall lands used for solid waste disposal be eligible for reversion to the United States by operation of law after the issuance of such patent.

(4) A conveyance pursuant to this section shall be contingent upon the County executing an agreement with the United States prior to such conveyance, the terms of which are acceptable to the Secretary of Agriculture, and that permanently holds the United States harmless for liability and indemnifies the United States against all costs arising from the United States' ownership or any and all activities, operations (including the storing, handling, and dumping of

hazardous materials or substances), or other acts conducted by Summit County or its licensees, employees, agents, successors or assigns on the four hundred seventy-seven acres transferred pursuant to this Act, whether such activities, operations, or other acts occurred prior to, on, or after the date of enactment of this Act. Such agreement shall be incorporated in the patent issued by the Secretary of the Interior for the land conveyed.

(b) INCORPORATION OF CONDITIONS.—The Secretary of the Interior shall incorporate the conditions specified in subsection (a) of this section in any patent conveying lands to Summit County pursuant to this section.

BRIEF EXPLANATION

The bill directs the Forest Service (USDA), upon entry into an agreement with the Homestake Mining Company, to acquire approximately 12,274 acres of land owned by Homestake that is in and adjacent to the Black Hills National Forest in South Dakota, and in return, the Secretary of Agriculture will convey to Homestake approximately 868 acres of National Forest land in Summit County, Colorado and approximately 40 acres of cabin sites in South Dakota. The bill also directs the Secretary, upon payment by Summit County of $25,000 to the Secretary, to convey to the County for continued use as a landfill an existing landfill site and expansion area in Summit County, totaling 477 acres.

PURPOSE AND NEED

As reported by the Committee, the bill authorizes and directs an interstate land exchange between the Homestake Mining Company of California and the United States Department of Agriculture (USDA). The bill is necessary because existing laws do not authorize USDA to carry out exchanges involving lands in more than one State. Under the terms of the proposed exchange, the Forest Service (USDA) will acquire approximately 12,274 acres of land owned by Homestake that is in and adjacent to the Black Hills National Forest in South Dakota, and in return, the Secretary of Agriculture (hereinafter, the "Secretary") will convey to Homestake approximately 868 acres of National Forest land in Summit County, Colorado and approximately 40 acres of cabin sites in South Dakota. The bill also authorizes the Secretary to sell to the County for continued use as a landfill an existing landfill site and expansion area in Summit County, totaling 477 acres.

Several years ago, the Homestake Mining Company, which originated as a business in the northern Black Hills of South Dakota in the late 19th Century, and which still owns large amounts of land in South Dakota and Wyoming, conducted an inventory of its land resources. The purpose of the inventory was to determine those lands owned by the Company which should remain in private ownership and those lands that might better be suited for transfer to the Forest Service, Homestake's predominant neighboring landowner.

As a result of the inventory, Homestake identified 12,274 acres in the northern Black Hills that are surplus to its programs and needs. These lands comprise tracts that are adjacent to or intermingled with National Forest lands and that, if acquired by the Forest Service, will promote better land management and public recreational opportunities in the National Forest.

In particular, Homestake's inventory identified two large tracts that possess exceptional scenic, environmental and recreational values. Both areas are included in the exchange authorized by this bill.

One area, consisting of 1,250 acres, comprises 20 miles of riparian habitat in Spearfish Canyon. Spearfish Canyon is a well-known scenic and recreational area that contains a trout stream. The Forest Service recently designated the Canyon as a National Forest Scenic Byway.

Homestake has managed Spearfish Canyon for the past 114 years in a manner that preserved its exceptional values. However, the increasing visitation and recreational use that will accompany the Scenic Byway designation and necessitates Forest Service management. Acquisition of the riparian lands will provide permanent, unrestricted public access to over 20 miles of stream bottom, fishing, hiking, and other recreational use.

The second area is an 8,125-acre parcel of land, known as the "Piedmont" area, located 7 miles northwest of Rapid City. The Piedmont is a tract of gentle forested land dissected by two major drainages known as the North and South Stagebarn Canyons. The canyons contain caves, springs, geologically interesting limestone deposits, and dramatic cliffs and walls hundreds of feet high. Since it has been in private ownership for over a century, the Piedmont remains largely undisturbed by human visitation, and is known for its interesting variety of plant species and a microclimate in the canyon bottoms.

Opportunities for primitive recreation abound in the canyons. Scientific research potential may also be significant. Acquisition of the Piedmont by the Forest Service will achieve a major land consolidation close to western South Dakota's largest city and eliminate the largest single inholding in the Black Hills National Forest.

Upon completion of its inventory, Homestake's goal was to sell the 12,274 acres to the Forest Service at fair market value. However Federal budget concerns made a land exchange a better alternative.

Although the Forest Service was unable to find sufficient quantities of National Forest land appropriate for exchange in South Dakota, it did find 868 acres in Colorado that were judged suitable for transfer to Homestake. The Colorado lands to be transferred are in six separate parcels as follows:

Parcel 1—Keystone Base (90 acres)—Encompasses two parking lots, base facilities, employee housing and other areas under existing permit to Keystone ski area, and an isolated tract of National Forest land suitable for disposal.

Parcel 2—Keystone Science School (135 acres)—Includes 35 acres currently under permit to the nonprofit science school and 100 acres of adjacent land which Homestake plans to sell to Keystone.

Parcel 3—Copper Mountain (241 acres)—Includes portions of existing parking lots, ski trails and the Copper Mountain Golf Course that are under existing permit and undeveloped land along Interstate 70 west of the main resort.

Parcel 4—Summit County Shops (104 acres)—Comprises an area currently permitted to the County and State Highway Department for maintenance facilities and other public uses. Homestake plans to sell this parcel to the County.

Parcel 5—South Frisco Bay (217 acres)—Open space which Homestake has slated for sale to the Town of Frisco (Co.) for development of a golf course and other recreational facilities. Disposal of this parcel has met with some opposition from individuals preferring its retention as open space. Accordingly, the legislation provides that Homestake will only acquire this parcel for resale to the Town if the Town and Summit County develop a land use plan for the parcel that emphasizes open space and recreational values.

Parcel 6—Frisco Triangle (81 acres)—Adjacent to Interstate 70. Homestake plans to retain 58 acres and to donate the remainder to the Town of Frisco for use as a nature center and wetlands conservation area.

In authorizing the above conveyances to Homestake, the bill expressly and permanently reserves public rights of access for fishing, bicycle paths and hiking on the Colorado Trail. In addition, the Secretary is directed to convey to Homestake not to exceed 40 acres of land in Lawrence County, South Dakota. These lands, which are located in Spearfish Canyon, consist of National Forest cabin permit sites. Homestake is directed to sell the sites to current permittees, if the permittees or their successors so desire, for the appraised value plus costs associated with the sales. The bill provides that the Secretary is to transfer to Homestake cabin sites if a current permittee requests the transfer. This provision will allow those permittees who desire to do so to continue their relation with the Forest Service rather than to purchase their sites. The Forest Service has stated that this conveyance will simplify land management in Spearfish Canyon.

As with all exchanges, H.R. 4567 mandates that the lands exchanged be of equal dollar value as determined by standard appraisal practices. If the values of the lands are not equal, they may be equalized by the payment of cash to the Secretary or Homestake, as long as the cash payment does not exceed 25% of the land value. This provision is similar to existing law governing exchanges carried out administratively. In addition, if the value of the Homestake properties exceeds that of the Forest Service lands, the Secretary may offer Homestake a monetary credit against timber harvest payments which Homestake or its agents might otherwise owe the government. This alternative is afforded the Secretary in recognition of the tight Federal budget and the time often needed to secure cash for equalization purposes.

The bill further provides that it is the sense of Congress that the exchange be completed within 270 days of the enactment of the bill and seeks to facilitate the consummation of the exchange by expediting the appraisal process and the execution of a final exchange agreement. The Committee notes that as the exchange involves specific parcels of land identified and approved by Congress further detailed studies of the lands and resources will not be required.

Although the Committee would have preferred an acquisition of Homestake's entire estate (surface and minerals) in South Dakota,

mineral rights will not be acquired. Instead, Homestake has agreed to relinquish any surface development rights on all lands it conveys to the Forest Service in Spearfish Canyon. The Committee believes this concession will permanently protect the Canyon's outstanding scenic and riparian values while allowing Homestake the underground mine in the area if minerals are ever discovered. In return for this concession of surface development rights, which Homestake is donating to the government, the Forest Service will be required to provide Homestake with such access to its underground rights retained as will reasonably permit future exploration and development without impairment of the values of Spearfish Canyon.

Homestake's retention of mineral rights will also be subject to regulatory provisions which require permits, bonding, and reclamation of mining activities on National Forest land.

As is stated in the findings of Section 1 of the bill, one of the primary purposes of the proposed land exchange is for the Forest Service to acquire 1,250 acres of riparian lands in the Spearfish Canyon drainage that are currently owned in fee by Homestake. The 1,250 acres being conveyed to the Forest Service generally follow a narrow strip of properties running for 20 miles along the main and east forks of Spearfish Creek. They consist of the creek bottom itself and riparian lands immediately adjacent to the creek. Adjacent National Forest lands form the bulk of the remaining land ownership in the canyon.

The bill proposes a land consolidation into Forest Service ownership that will greatly enhance future public access for recreation and enjoyment of the natural beauty of the canyon and facilitate implementation of a Forest Service management plan for the canyon. The consolidation will also prevent further real estate speculation, sales or development on the riparian lands.

Water flows in Spearfish Canyon are extremely complex and atypical due to the area's porous limestone geology. In some stretches of the creek, springs and underground flows recharge the surface at frequent intervals. In others, surface flows disappear into the streambed. The canyon's hydrology and water flows have not been well studied extensively. However, it is known that there are areas where existing diversions for municipal and commercial use are replenished by downstream springs or upwellings, and other areas where historically there has been little or no water in the stream, even before such diversions began.

Homestake has done an excellent job of managing the water resources of Spearfish Creek for the past 114 years. This is attested to by the extremely high quality of Spearfish Canyon's riparian ecosystems and by the stream's Blue Ribbon Trout classification.

The Committee and the Forest Service want to assure that the future exercise of Homestake's water rights be done in a manner that will not jeopardize the ongoing quality of the fishery, riparian habitat and recreational resource in the Canyon. Accordingly, the Committee added language to the bill to insure that any future exercise of such rights by Homestake, or expansion of existing diversions and use, will be governed by applicable Federal, State and local law. Homestake has assured the Forest Service and the Committee that it does not plan any additional diversions, withdrawals

or increased use of the waters of Spearfish Creek or its tributaries. Homestake has also agreed that if it proposes additional diversions or increased use, it will consult well in advance with the Forest Service and the State of South Dakota or others to discuss possible cooperative agreements or the purchase, exchange, donation or other acquisition of a portion of Homestake's retained water rights as may be determined necessary to meet watershed management objectives.

For several decades, Summit County, Colorado, has operated its County landfill on a tract of land near Keystone permitted to it for that purpose by the Forest Service. However, the existing permit is scheduled to expire in the near future and the Forest Service has indicated to the County that the permit will not be renewed. Because no suitable private lands have been identified as potential alternative landfill sites, and because the Forest Service does not desire to maintain the existing site, the bill authorizes the sale of the area to the County, if the County will agree to hold the United States harmless and indemnify the United States for any liability arising from the past, present and future activities at the Keystone site. This agreement, and the resulting relief from liability, are a major part of the consideration for which this sale is authorized. In addition, the County must pay to the Secretary $25,000 for the 477 acres it is seeking to acquire.

The tract to be conveyed to Summit County includes the landfill site, plus a reasonable amount of land for expansion. Additional protection of the public interest has been added to the legislation by giving the United States the proceeds of any future sale of the land if the County changes its mind and determines not to expand the landfill onto the supplemental lands it will acquire.

The Committee cautions that this conveyance is based on the particular circumstances associated with this case, and is not indicative of general policy. The Committee is also aware that the Administration is working on developing a comprehensive policy and guidelines to address the larger National Forest landfill permit problem nationwide (there are some 110 landfills currently permitted on National Forest lands) and hopes recommendations will be forthcoming in the near future.

SECTION-BY-SECTION ANALYSIS

Section 1—Findings and purposes

Section 1(a) states the findings of Congress that certain lands in or adjacent to the Black Hills National Forest in Lawrence and Meade Counties, South Dakota, which are owned by Homestake Mining Company of California (hereinafter, "Homestake"), are intermingled with National Forest lands.

The Homestake lands comprise potential valuable additions to the Black Hills National Forest to serve important public values and objectives, including but not limited to public access, hunting, fishing, other outdoor recreation, fish and wildlife habitat protection, the preservation and enhancement of scenic beauty, and more efficient National Forest land management. Additionally, the lands are at risk of being sold and developed for purposes incompatible

with the Act's objectives, if they are not acquired for addition to the Black Hills National Forest.

Homestake has offered to convey such lands, which total approximately twelve thousand two hundred and seventy-four acres, to the United States by sale or exchange so that they may be managed for National Forest and land conservation purposes.

Homestake has identified national forest lands in Summit County, Colorado that are suitable for disposal through a land exchange and that Homestake or local government units would like to acquire. Those lands are intermingled with or are adjacent to privately owned and developed lands, are currently developed, are permitted for ski area or local government purposes, or are adjacent to developed or permitted areas or communities.

Given the relative environmental and other values of the lands proposed for exchange in the Act, the land exchange set forth herein is clearly in the public interest and represents the land acquisition strategy that best meets dual public objectives of acquiring the Spearfish Canyon and other South Dakota properties, while at the same time minimizing or eliminating cash outlays by the United States to achieve such objectives.

Section 1(b) sets out the purpose of the Act to further the public interest by acquiring lands in South Dakota with important values for permanent public management and protection and to transfer certain lands to non-federal ownership in Summit County, Colorado.

Section 2—South Dakota-Colorado land exchange

Section 2(a) requires the Secretary of Agriculture (hereinafter, "the Secretary"), to exchange lands with Homestake as set forth in the Act if Homestake enters into an exchange agreement with the Secretary.

Section 2(b) requires Homestake, except as otherwise provided in section 2(b), to convey to the Secretary 1,274 acres of lands in Lawrence and Meade Counties, South Dakota. Those lands include 1,250 acres or riparian lands in Spearfish Canyon that encompass 20 miles of stream frontage on Spearfish Creek, and are generally depicted on maps entitled "Forest Service-Homestake Land Exchange—South Dakota Lands to Forest Service", numbered A–H, and dated February 1990. In making such conveyance Homestake will retain—

(1) All water rights within the watershed of Spearfish Creek and its tributaries owned, held, or controlled by Homestake as of the date of enactment of the Act and must exercise such rights in accordance with any subsequent cooperative agreements or undertakings entered into between Homestake, the Secretary, and the State of South Dakota for the protection and enhancement of the values of Spearfish Canyon as set forth in the Act.

(2) Cabin sites as indicated on the map numbered "A" referenced in section 2(b) within the watershed of Spearfish Creek and its tributaries that are intermingled with the lands to be conveyed to the Secretary but that are owned and permitted by Homestake to private parties and such sites will continue to remain in private ownership.

Additionally, Homestake will retain its mineral rights in the lands owned, held or controlled by Homestake as of the date of enactment of this Act, except that—

(1) any future exercise of such mineral rights will be subject to the provisions of 36 CFR 251-15 in effect on the date of enactment of the Act pertaining to surface and other use of lands conveyed to the Secretary where mineral rights are reserved; and

(2) with respect to mineral rights retained in the riparian lands within the watershed of Spearfish Canyon, any exploration and development of such rights will be limited to methods and activities that do not disturb the surface of such lands.

Section 2(b) further provides that if such mineral rights are ever proposed for exploration and development, the Secretary must provide Homestake with such access or permits on, through, or under National Forest lands including, but not limited to permits for drilling, tunnels, air shafts, surface vents and other activities incidental to exploration or underground mining operations adjacent to such riparian lands as will reasonably permit exploration and development of the mineral rights without surface disturbance of such riparian lands or impairment of the values of Spearfish Canyon as set forth in the Act.

Section 2(c) requires the Secretary, upon receipt of title to the lands identified in section 2(a) to simultaneously convey to Homestake all right, title, and interest of the United States, except for mineral rights, subject to valid existing rights and existing National Forest improvements, in and to the following:

(1) Approximately eight hundred and sixty-eight acres of lands located in Summit County, Colorado, as generally depicted on maps entitled "Forest Service-Homestake Land Exchange—Lands to Homestake", numbered 1-3 and dated May 1990, and numbered 4-6 and dated March 1990, except that the lands identified on Map number 5 and generally known as the South Frisco Bay parcel must not be patented to Homestake unless and until the Town of Frisco and Summit County, Colorado jointly agree to a land use plan for such parcel that emphasizes the use of such parcel for open space and recreation. If the South Frisco Bay parcel is not patented to Homestake within eighteen months after the date of enactment of the Act, the Secretary must in lieu thereof either pay Homestake cash equalization moneys without regard to the 25% limitation contained in section 3(a) of the Act or offer Homestake monetary credits pursuant to that section, as the Secretary may find preferable.

(2) Not to exceed forty acres of lands located in Lawrence unty, South Dakota, which currently comprise National st cabin permit sites, as generally depicted on a map entitled "Forest Service-Homestake Land Exchange—Spearfish Cabin Sites to Homestake", dated February 1990, that must be sold to the current cabin permittees by Homestake at the value of such lands as determined by an appraisal done pursuant to seciton 3(b) plus any surveying, platting or other administrative costs incurred by Homestake to prepare and sell such lands, upon application by the permittees or their successors in

interest. The transfer of any particular cabin site to Homestake pursuant to section 2(c)(2) will be contingent on the permittee's request of such a transfer. If such a request is not made, the site will continue to be permitted by the Secretary in accordance with existing rules, regulations, and procedures. Mineral rights in the lands identified in section 2(c) will not be conveyed to Homestake and, subject to valid existing rights, will be withdrawn from further appropriation under the mining laws and from disposition under all laws pertaining to mineral leasing and all amendments thereto.

Section 2(d) provides that patents issued by the Secretary of the Interior for the lands conveyed pursuant to section 2(c)(1) will reserve to the public, for administration by the Secretary or by such State or local units or agencies of government, or by private nonprofit organizations, as the Secretary in consultation with local planning authorities determines appropriate and qualified to fulfill the purposes of the reservation—

(1) the right of access for fishing use along all streambeds (up to the ordinary high water mark) on streams which flow through the land conveyed;

(2) a right-of-way for the Colorado Trail along its existing routes through the lands identified on Map 3 of the lands referred to in subsection (c) or along relocated routes as may be identified by the Secretary in consultation with local planning authorities;

(3) a right-of-way for relocation of the existing bicycle path through the lands identified on Map 2 of the lands referred to in section 2(c) to a new route as may be identified by the Secretary in consultation with local planning authorities.

Section 3—Terms and conditions of exchange

Section 3(a) requires that the values of the lands to be exchanged pursuant to the Act be equal as determined by the Secretary, or if not equal, that they be equalized by the payment of money to Homestake or to the Secretary subject to the 25 percentum cash equalization limitation of section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716). The Secretary must try to reduce the amount of cash equalization to as small an amount as possible. In lieu of any cash equalization payments which may be due Homestake pursuant to this Act, the Secretary may elect to offer Homestake monetary credits, which shall be considered "moneys received" within the meaning of the Act of May 23, 1908 (16 U.S.C. 500), against any moneys owed the Secretary by Homestake or its agents for timber sales within the Black Hills National Forest. Any cash equalization moneys received by the United States pursuant to the Act must be considered money received and deposited pursuant to the Act of December 4, 1967, as amended (Public Law 90-171, 16 U.S.C. 484a), commonly known as the Sisk Act. The value of the surface development rights relinquished by Homestake on the 1,250 acres within Spearfish Canyon pursuant to section 2(b)(1)(B) must be considered for all purposes of law a donation by Homestake to the United States and must not be required to be appraised for purposes of value equalization or other provisions of the Act.

Section 3(b) provides that in order to expedite the consummation of the exchange directed by this Act, Homestake must arrange and pay for appraisals by a qualified appraiser or appraisers mutually acceptable to Homestake and the Secretary of all lands and interests therein to be included in the exchange for which appraisals are required for purposes of the Act. Such appraisals must be completed and submitted to the Secretary for approval within sixty days after the enactment of the Act. In the event the Secretary and Homestake are unable to agree to the appraised value of a certain tract or tracts of land to be included in the exchange within one hundred and twenty days after the date of enactment of the Act, the appraisal, appraisals, or appraisal issues in dispute must be resolved through a process of bargaining or submitted for arbitration according to Section 3 of the Federal Land Exchange Facilitation Act of 1988 (Public Law 100–409, 43 U.S.C. 1716(d)). Appraisals of lands in Colorado identified in section 2(c) of the Act for conveyance to Homestake may not reflect any diminution in value attributable to any conversion of existing ski area permits into ski area permits pursuant to the National Forest Ski Area Permit Act of 1986 (16 U.S.C. 497b note) (Public Law 99–522).

Section 3(c) requires the Secretary to attempt, within 60 days after the completion of appraisals under section 3(c), to enter into an exchange agreement with Homestake to consummate the exchange of the specific tracts of land identified in Section 2 of the Act. Unless otherwise specified in the exchange agreement, the tracts must be exchanged at the earliest possible date after the exchange agreement is signed. It is the intent of Congress that the exchange be completed no later than two hundred and seventy days after the date of enactment of the Act.

Section 3(d) requires that lands acquired by the United States within or adjacent to the exterior boundaries of the Black Hills National Forest be added to and administered as part of the Black Hills National Forest. Section 3(d) authorizes the Secretary to modify such boundaries to incorporate such lands upon their acquisition by the United States. Upon their inclusion in the National Forest System such lands must be managed in accordance with the laws, rules and regulations generally applicable to the National Forest System, unless otherwise specifically provided by the Act.

Section 3(e) provides that, as used in the Act, the term "Homestake" means the Homestake Mining Company of California or its successors or assigns.

Section 4—Conveyance to Summit County, Colorado

Section 4(a) requires that upon payment by Summit County to the Secretary of the sum of $25,000 and execution of an agreement between the County and the United States as specified in paragraph (4), the Secretary must convey to Summit County, Colorado, all right, title and interest of the United States in approximately four hundred and seventy-seven acres of land as generally depicted on a map numbered 7 and entitled "Summit County Landfill", dated July 1990. Such conveyance will be subject to the following conditions:

(1) The lands conveyed must continue to be used for solid waste disposal, expansion of the Summit County landfill, or other authorized purposes of Summit County government.

(2) In the event Summit County ever sells, exchanges or otherwise disposes of all or a portion of the lands acquired pursuant to section 4, all proceeds of such sale, exchange, or disposal will accrue to the United States, or the Secretary may elect to reacquire, without compensation to Summit County, any or all portions of such lands that have not been used for solid waste disposal, as the Secretary determines appropriate prior to their sale, exchange, or disposal by the County.

(3) The patent issued by the Secretary of the Interior pursuant to section 4 must not contain a reverter provisions and under no circumstances may lands used for solid waste disposal be eligible for reversion to the United States by operation of law after the issuance of such patent.

(4) A conveyance pursuant to section 4 will be contingent upon the County executing an agreement with the United States prior to such conveyance, the terms of which are acceptable to the Secretary and that permanently holds the United States harmless for liability and indemnifies the United States against all costs arising from the United States' ownership or any and all activities, operations (including the storing, handling, and dumping of hazardous materials or substances), or other acts conducted by Summit County or its licensees, employees, agents, successors or assigns on the four hundred seventy-seven acres transferred pursuant to the Act, whether such activities, operations, or other acts occurred prior to, on, or after the date of enactment of the Act. Such agreement must be incorporated in the patent issued by the Secretary of the Interior for the land conveyed.

Section 4(b) requires the Secretary of the Interior to incorporate the conditions specified in section 4(a) in any patent conveying lands to Summit County pursuant to section 4.

COMMITTEE CONSIDERATION

I

The Subcommittee on Forests, Family Farms, and Energy conducted a public hearing on H.R. 4567 on June 13, 1990. Testimony was received from Representatives Tim Johnson of South Dakota and Ben Nighthorse Campbell of Colorado, sponsors of the bill; Mr. F. Dale Robertson, Chief of the Forest Service, Department of Agriculture; and Mr. Rich Harr, director of the Corporate Land Division of Homestake Mining Company. Mr. Robertson expressed concerns on behalf of the administration about particular provisions of the bill as introduced and offered recommendations for modifications. Mr. Robertson noted that, with these changes, the exchange would significantly enhance management of the Black Hills National Forest and serve the public interest. The other witnesses testified in support of the bill.

II

The Subcommittee met, pursuant to notice, in open business session on July 18, 1990. Mr. Johnson offered an amendment in the nature of a substitute to H.R. 4567, explained the changes in the substitute and explained that the concerns that had been raised in a letter by the Administration (reprinted below) were addressed in the substitute. Mr. Volkmer offered an amendment to delete a provision regarding the disposition of a tract of land adjacent to lands to be conveyed to Summit County, Colorado. The Volkmer amendment, and the Johnson amendment in the nature of a substitute, as amended, were approved by voice vote. Mr. Morrison moved to favorably report the bill, as amended, to the Committee, and the motion was agreed to by voice vote.

III

The Committee on Agriculture met in open business session on July 18, 1990. Chairman de la Garza, after calling the meeting to order, recognized Mr. Volkmer, who described H.R. 4567 as amended by the Subcommittee. Messrs. Johnson and Morrison spoke in support. Mr. Volkmer moved to report the bill, as amended, favorably to the House, and the motion was agreed to by a voice vote in the presence of a quorum.

ADMINISTRATION POSITION

At the time of the filing of this report, the Committee had not received a report from the U.S. Department of Agriculture concerning H.R. 4567, as amended, a bill to authorize an exchange of lands in South Dakota and Colorado. However, the following letter was received by the Subcommittee on Forests, Family Farms, and Energy providing concerns on the bill as introduced:

U.S. DEPARTMENT OF AGRICULTURE,
FOREST SERVICE,
Washington, DC.

Reply to: 1510/5430.

Hon. HAROLD L. VOLKMER,
Chairman, Subcommittee on Forests, Family Farms, and Energy, Committee on Agriculture, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Forest Service was asked to clarify several matters relating to H.R. 4567, a bill, "To authorize an exchange of lands in South Dakota and Colorado," at the hearing on June 13. Specifically, we were asked to address: water diversion in and around Spearfish Canyon; reservation of mineral rights on the lands to be conveyed by Homestake Mining Company to the United States; and the effect of exchanges in Spearfish Canyon involving lands with summer home permits.

Diversion of water in Spearfish Canyon

In our testimony, we requested that ways be found to minimize the adverse effects of Section 2(b)(2) of H.R. 4567 which provides that Homestake retain all water rights within the watershed of Spearfish Creek and its tributaries. We recommended that any di-

version of water by Homestake or their successors be restricted to where diversions currently exist or further down stream.

Based on our evaluation of South Dakota law and Homestake's past record of responsible management, our concerns about water diversions in the Spearfish Canyon have been allayed. We have assurances that Homestake shall exercise a reservation of water rights in accordance with Federal, State, and local laws, which contain adequate provisions for the consideration of public interest relative to proposals for new diversions and increases in water use. We have also agreed to enter cooperative agreements with Homestake concerning diversion of water in Spearfish Canyon.

Reservation of mineral rights by Homestake Mining Company in Spearfish Canyon and on other lands

We testified that we were concerned about the effect of Section 2(b)(1) which provides that Homestake retain all mineral rights in the lands conveyed to the Secretary of Agriculture. We were especially concerned about protecting other significant resources—especially in Spearfish Canyon—should exploration and development of mineral rights be exercised on the lands in the future.

After further discussion, we have agreed that Homestake could retain all mineral rights as originally proposed in H.R. 4567 for the 12,274 acres conveyed to the United States, subject to the Secretary's regulations in 36 CFR 251.15. A copy of these regulations shall be attached to and become part of the warranty deed conveying the property. In addition to the protection of resource values provided by the Secretary's regulations, Homestake has agreed to a restriction of surface occupancy for the 1,250 acres of Homestake lands conveyed to the United States in Spearfish Canyon. This restriction prevents Homestake from occupying the surface of those lands for mining and exploration purposes, and protects the riparian, fisheries, and esthetic values in Spearfish Canyon.

Homestake also agreed to ensure that they shall use mineral exploration and development methods that shall not impact the surface of the 1,250 acres in Spearfish Canyon or the other special resource values in the Canyon. Homestake has also agreed to ensure that their successors or assigns shall uphold this agreement.

Homestake has proposed that the United States reserve and withdraw the mineral estate in all lands to be conveyed by the United States to Homestake. Although we believe this to be unnecessary, we have no objections as long as any language added to H.R. 4567 allows future conveyance of the mineral estate to the surface owner as authorized by Section 209(b) of the Federal Land Policy and Management Act.

The effect of exchanges of lands with summer home permits in Spearfish Canyon

We believe the conveyance of Forest Service lands with summer home permit sites to Homestake will ultimately simplify land management in Spearfish Canyon. Currently, there are 201 summer cabin sites in the 20-mile stretch of Spearfish Canyon affected by H.R. 4567. Of these, 39 permitted summer homes are on the National Forest land and are to be conveyed to Homestake. Homestake leases approximately 131 cabin sites in Spearfish Canyon

within the overall tract proposed for conveyance to the United States. In addition, about 31 cabin sites within the Spearfish Canyon tract are now in other ownership.

The current landownership pattern is complex. The Forest Service summer home sites are not grouped together in one or two locations, but are intermingled with cabins leased by Homestake. The original placer claims were so irregular that, in some cases, a Forest Service summer home may be in the middle of seven or eight privately-owned summer homes. Some of the summer homes are partly on National Forest and partly on private land. The Forest Service and Homestake are presently surveying the property boundaries of these summer home sites and clarifying many uncertainties about property location.

Property boundaries of each inholding in the area in Spearfish Canyon affected by H.R. 4567 have been surveyed and would be marked and posted prior to the exchange. Lot boundaries have been located to allow unimpeded access by the public for the entire length of Spearfish Creek affected by the transaction. In addition, each of the summer homes permitted on National Forest System land has other associated permits, mostly for spring developments supplying domestic water. The conveyance of the 40 acres of land in Spearfish Canyon to Homestake would eliminate administration of these associated special use permits.

As proposed in H.R. 4567, the National Forest System lands in Spearfish Canyon with the 39 summer homes would be conveyed to Homestake. Homestake plans to convey these 39 summer home sites to current permittees once the land is conveyed to them. It is our understanding that Homestake plans to convey their 131 cabin sites in Spearfish Canyon to the current leasees.

An identical letter has been sent to Congressman Vento.

We appreciate the opportunity to provide this additional information. Please let us know if you have any further questions.

BUDGET ACT COMPLIANCE (SECTION 308 AND SECTION 403)

The provisions of clause 2(l)(3)(B) of rule XI of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974 (relating to estimates of new budget authority, new spending authority, or new credit authority, or increased or decreased revenues or tax expenditures) are not considered applicable. The estimate and comparison required to be prepared by the Director of the Congressional Budget Office under clause 2(l)(3)(C) of rule XI of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974 were not received by the Committee prior to the filing of this report.

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the Committee estimates that enactment of H.R. 4567, as amended, will have no inflationary impact on the national economy.

OVERSIGHT STATEMENT

No summary of oversight findings and recommendations made by the Committee on Government Operations under clause 2(b)(2) of rule X of the Rules of the House of Representatives was available to the Committee with reference to the subject matter specifically addressed by H.R. 4567, as amended.

No specific oversight activities other than the hearings detailed in this report were conducted by the Committee within the definition of clause 2(b)(1) of rule X of the Rules of the House of Representatives.

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